

CLAUSE I-138 – TERMINATION FOR CONVENIENCE OF SURA (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (August 2002)

- (a) SURA may terminate performance of work under this subcontract in whole or, from time to time, in part if the Subcontracting Officer determines that a termination is in SURA's interest. The Subcontracting Officer shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination and except as directed by the Subcontracting Officer, the Subcontractor shall immediately proceed with the following obligations:
  - (1) Stop work as specified in the notice;
  - (2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause), except as necessary to complete the continued portion of the subcontract;
  - (3) Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination;
  - (4) Assign to SURA, as directed by the Subcontracting Officer, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case SURA shall have the right to settle or pay any termination settlement proposal arising out of those terminations;
  - (5) With approval or ratification to the extent required by the Subcontracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause;
  - (6) Transfer title (if not already transferred) and, as directed by the Subcontracting Officer, deliver to SURA any information and items that, if the subcontract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information;
  - (7) Complete performance of the work not terminated;
  - (8) Take any action that may be necessary, or that the Subcontracting Officer may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which SURA has or may acquire an interest; and
  - (9) Use its best efforts to sell, as directed or authorized by the Subcontracting Officer, termination inventory other than that retained by SURA under subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Subcontracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SURA under this subcontract, credited to the price or cost of the work, or paid in any other manner directed by the Subcontracting Officer.
- (c) After termination, the Subcontractor shall submit a final termination settlement proposal to the Subcontracting Officer in the form and with the certification prescribed by the Subcontracting Officer. The Subcontractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Subcontracting Officer upon written request of the Subcontractor within this 1-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the Subcontracting Officer may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (d) Subject to paragraph (c) above, the Subcontractor and the Subcontracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; provided, that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- (e) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however if the Subcontractor is not an educational institution, and is a non-profit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principle shall apply; provided, that if the Subcontractor is a non-profit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Subcontractor.

- (f) SURA may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Subcontractor for the terminated portion of this subcontract, if the Subcontracting Officer believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (g) The Subcontractor has the right of appeal as provided under the Disputes clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.